

## **CHAPTER 4-12-10**

### **MISTAKES IN BIDS OR PROPOSALS**

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#### **4-12-10-01. Minor informalities.**

1. Minor informalities are insignificant omissions or nonjudgmental mistakes that are matters of form rather than substance, evident from the bid or proposal document, with a negligible effect on price, quantity, quality, delivery, or contractual conditions, that can be waived or corrected without prejudice to other bidders or offerors.
2. If the mistake is attributable to an error in judgment by the bidder or offeror, the bid or proposal may not be waived or corrected. An example of an error in judgment would be failure to consider all the requirements of the solicitation and submitting an inaccurate price.
3. Correction or withdrawal of a bid or proposal because of an inadvertent, minor informality requires careful consideration to protect the integrity of the competitive solicitation process and to ensure fairness.
4. Bid or proposal correction or withdrawal by reason of a minor informality is permissible but only to the extent it is not contrary to the interest of the state or the fair treatment of other bidders or offerors.
5. Examples of minor informalities include failure of a bidder or offeror to:
  - a. Return the number of signed bid or proposal documents required by the solicitation;
  - b. Sign the response, but only if the unsigned response is accompanied by other material indicating the bidder's intent to be bound, such as a cover letter, or a signed bid or proposal is provided within the time limit set by the procurement officer;
  - c. Sign or initial a material correction to the bid or proposal, including a typeover, writeover, correction tape, or white-out, but the bidder or offeror may be required to confirm the correction within the time limit set by the procurement officer;

- d. Submit product literature or other documents required in the solicitation, but only if the bidder or offeror complies within the time limit set by the procurement officer; and
- e. Acknowledge receipt of an amendment to the solicitation, but only if:
  - (1) It is clear from the bid or proposal that the bidder or offeror received the amendment and intended to be bound by its terms;
  - (2) The amendment involved had a negligible effect on price, quantity, quality, or delivery; or
  - (3) The bidder or offeror provides an acknowledgment of receipt within the time limit set by the procurement officer.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**4-12-10-02. Unit price governs.** In case of a mistake in the calculation of total price, the unit price will govern.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**4-12-10-03. Mistakes discovered before opening.** A bidder or offeror may correct a mistake discovered before the time and date set for opening of bids or proposals by withdrawing or correcting the bid or proposal.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**4-12-10-04. Confirmation of bid or proposal.**

1. When the procurement officer knows or has reason to conclude that a mistake has been made, the procurement officer may request the bidder or offeror to confirm the bid or proposal. Examples of situations in which confirmation is appropriate include obvious, apparent errors on the face of the bid or proposal, or a bid or proposal unreasonably priced in relation to the others submitted.

2. If the bidder or offeror confirms the mistake, the bid or proposal may be corrected or withdrawn in accordance with these rules.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**4-12-10-05. Mistakes discovered after opening but before award.**

1. The procurement officer may waive minor informalities or allow the bidder or offeror to correct them depending on which is in the best interest of the state.
2. If the mistake and the intended correct bid or proposal are clearly evident on the face of the bid or proposal document, the bid or proposal must be corrected to the intended correct bid or proposal and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid or proposal document are typographical errors, errors in extending unit prices, transposition errors, and mathematical errors.
3. A bidder may be permitted to withdraw a low bid or proposal if a mistake is clearly evident on the face of the solicitation response but the intended correction is not similarly evident or the bidder or offeror submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**4-12-10-06. Mistakes discovered after award.** A mistake in a bid or proposal discovered after award does not relieve the contractor from performance in accordance with the contract award. The bidder or offeror must submit evidentiary proof of value that clearly and convincingly demonstrates a mistake has been made. If the terms of the contract permit modification of the contract price, no correction may be permitted that would cause the contract price to exceed the next low bid or result in another proposal being determined to be most advantageous.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04, 54-44.4-05, 54-44.4-10

**4-12-10-07. Determinations required.** When a bid or proposal is corrected or withdrawn, or a correction or withdrawal is denied, the procurement officer will

prepare a written determination showing that the relief was granted or denied in accordance with these rules.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-04